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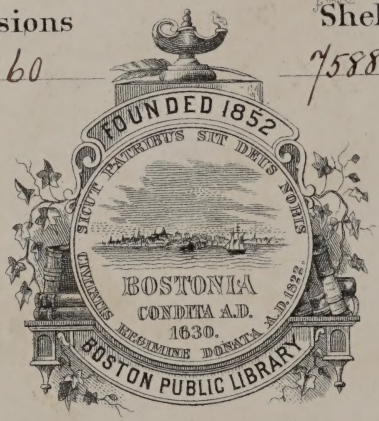

Received Apr. 25, 1889

SUGGESTIONS

UPON

THE BILL INTRODUCED

BY

MR. DAWES, OF MASSACHUSETTS,

TO AMEND THE ACTS OF CONGRESS APPROVED MARCH 2, 1863 AND 1864.

BOSTON:
J. E. FARWELL AND COMPANY, PRINTERS,
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To the Honorable the Senators and members of the House of Representatives of the United States:

The undersigned of counsel, in several hundred criminal cases in the State of Massachusetts, now pending in the State Courts, and in the Circuit Court of the United States, in the District of Massachusetts, beg leave to represent,

1st. That they are informed that there is now depending in Congress a bill to amend the 3d Section of the Act of Congress approved March 2, 1833, which is in the following words: —

"Section 3. And be it further enacted, that in any case where suit or prosecution shall be commenced, in a court of any State, against any Officer of the United States, or other person, *for or on account of any act done under the revenue laws of the United States, or under color thereof, or for or on account of any right, authority, or title set up or claimed by such officer,* or other person, *under any such law of the United States,* it shall be lawful for the defendant in such suit or prosecution, at any time before trial, upon a petition to the Circuit Court of the United States, in and for the district in which the defendant shall have been served with process, setting forth the nature of said suit or prosecution, and verifying the said petition by affidavit, together with a certificate, signed by an attorney or counsellor-at-law of some Court of Record of the State in which such suit shall have been commenced, or of the United States, setting forth that, as counsel for the petitioner, he has examined the proceedings against him, and carefully inquired into all the matters set forth in the petition, and that he believes the same to be true; which petition, affidavit, and certifi-

cate shall be presented to the said Circuit Court, if in session, and, if not, to the Clerk thereof, at his office, and shall be filed in said office, and the cause shall thereupon be entered on the docket of said court, and shall be thereafter proceeded in as a cause originally commenced in that court; and it shall be the duty of the Clerk of said court, if the suit were commenced in the court below by summons, to issue a writ of *certiorari* to the State Court, requiring said court to send to the said Circuit Court the record and proceedings in said cause; or, if it were commenced by *capias*, he shall issue a writ of *habeas corpus cum causa*, a duplicate of which said writ shall be delivered to the Clerk of the State Court, or left at his office, by the Marshal of the district, or his deputy, or some person duly authorized thereto; and, thereupon, it shall be the duty of the said State Court to stay all further proceedings in such cause, and the said suit or prosecution, upon delivery of such process, or leaving the same as aforesaid, shall be deemed and taken to be moved to the said Circuit Court, and any further proceedings, trial, or judgment therein in the State Court shall be wholly null and void. And, if the defendant in any such suit be in actual custody on mesne process therein, it shall be the duty of the Marshal, by virtue of the writ of *habeas corpus cum causa*, to take the body of the defendant into his custody, to be dealt with in the said cause according to the rules of law and the order of the Circuit Court, or of any Judge thereof, in vacation; and all attachments made, and all bail and other security given, upon such suit or prosecution shall be and continue in like force and effect as if the same suit or prosecution had proceeded to final judgment and execution in the State Court; and if, upon the removal of any such suit or prosecution, it shall be made to appear to the said Circuit Court that no copy of the record and proceedings therein, in the State Court, can be obtained, it shall be lawful for said Circuit Court to allow and require the plaintiff to proceed *de novo*, and to file a declaration of his cause of action, and the parties may thereupon proceed as in action originally brought in said Circuit Court; and, on failure of so proceeding, judgment of *nol. pros.* may be rendered against the plaintiff, with costs for the defendant.

And also to amend section 50 of the Internal Revenue Act, passed in 1864, which is as follows: —

"SECTION 50. And be it further enacted, That the provisions of the

Act entitled "An Act further to provide for the collection of duties on imports," approved March second, one thousand eight hundred and thirty-three, now in force, shall be taken and deemed as extending to and embracing all cases arising under the laws for the collection of internal duties, stamp duties, licenses, or taxes, which have been, or may be hereafter, enacted; and all persons duly authorized to assess, receive, or collect such duties or taxes under such laws, are hereby declared to be, and to have been revenue officers within the true intent and meaning of the said act, and entitled to all the exemptions, immunities, benefits, rights, and privileges therein enumerated or conferred."

And that the amendment proposed is intended to so alter the law, as to remove back from the Circuit Court of the United States, the large class of cases before alluded to, to the State Courts and prevent a trial of the cases in the United States Courts, and compel the parties, by act of congress, to abide the Jurisdiction and decision of the State Courts.

The prosecutions referred to are all indictments or complaints against a large class of citizens, who are either wholesale or retail dealers. in spirituous liquors, or inn-keepers in Massachusetts, and who hold a United States license to do the acts complained of, and for which each have paid, yearly, the sum required by law, and have paid all taxes assessed upon the liquors and business and their several income tax.

By the State law of Massachusetts the selling or dealing in spirituous liquors, wine, beer, ale, and cider is made a criminal offence, and the sale is prohibited and made punishable by imprisonment in the House of Correction, like any other criminal act. The business, however, has been and still is carried on to a great extent in the State, and it is quite safe to say, that one fourth of the revenue derived by the Government of

the United States, from Massachusetts, for the last three years, has been derived from this branch of trade, and a large number of influential men of business are engaged in it.

There are about seventeen thousand of the citizens of the State who are directly or indirectly interested in the business, and, having paid for their licenses and their taxes, they believe and are advised that the Laws of the United States give them authority to carry on the business, and when properly heard by the United States Courts they will be sustained, and discharged from the indictments found against them.

They have at all times paid their United States licenses and taxes, and continue to do so to the present time, and they claim that *they should at least have the advantage of the laws as they were, under which they paid their taxes, and for their licenses, and would beg leave to be permitted to suggest, that it would be unjust to them for Congress to pass a law aimed at them, and only intended by its movers to effect their interest, and confine them in prison without first having the decision of the tribunal now appointed by law for that purpose.*

It may be said, that these cases cannot be removed to the United States Courts by the Acts printed above. If that is so, no amendment is necessary, and we shall find ourselves without remedy, as there is no other way sufficiently practicable to reach the United States Courts. For although the Judiciary Act gives the right of a writ of error in each case, the State Courts hold that the writ does not operate as a *supersedeas* and the defendant may be sentenced, and serve his six months, or a year, at hard labor, in the House of Cor-

rection, before his case can be tried by the Supreme Court of the United States ; and it is doubted whether the Judges of the Supreme Court of the United States have power to enforce and give effect to the writ of error by writ of *habeas corpus*.

At present, this class of parties are compelled by the United States to take out and pay for their licenses, *and are punished by fine and imprisonment if they neglect to do so.* The State punishes them by fine and imprisonment if they carry on the business licensed, and take the paying for the license as *prima facia evidence* of their guilt. And not satisfied with that, the party *claiming to be the temperance men* of the State are attempting to absolutely prevent their being adjudged by the Courts of the United States.

We take the liberty, therefore, to suggest that such a course would not only be unjust, but oppressive to that class of citizens; *but would immediately defeat the collection of the immense revenue*, derived from the business, which is now so much needed by the Government, and would seriously affect the business in other States, especially those that manufacture this class of merchandise, made contraband by the laws of Massachusetts.

Finally, allow us to suggest that we do not believe that the intelligent portion of the people of the State of Massachusetts desire the amendment of the Act of Congress or the further prosecution of the trade in spirituous liquors, &c., but would prefer a State license law, and we beg your careful and personal attention to the bill referred to.

Respectfully,

N. Richardson.

Geo Sennott

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